

Udal Singh and anr. Vs. Baldeo Singh and Tara Singh and ors.

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Court : Allahabad

Decided On : May-25-1920

Reported in : (1921)ILR43All1

Judge : Piggott and ;Kanhaiya Lal, JJ.

Appellant : Udal Singh and anr.

Respondent : Baldeo Singh and Tara Singh and ors.

Judgement :

Kanhaiya Lal, J.

1. The dispute in this appeal relates to certain property which belonged to Narpat Singh, who died childless in April, 1912. He had six nephews alive at the time of his death. Out of them three, namely, Raghabar Singh, Tura Singh, and Rewat Singh, were the sons of his brother Ganpat Singh, one Baldeo Singh was the son of his brother Dalip Singh, and the remaining two, Gajram Singh and Genda Singh, were the sons of his brother Roshan Singh. Ganpat Singh, Dalip s Singh and Roshan Singh had died in the life-time of Narpat Singh and had been living separately from him; so were their sons. On the death of Narpat Singh an application for mutation of names was presented by Raghubar Singh, Tura Singh and Gajram Singh on behalf of themselves and their minor brothers, Rewat Singh and Genda Singh, for the entry of the names of all the nephews in respect of the estate left by the deceased, in equal shares, An objection was filed by Baldeo Singh, claiming a half share in the said property on the ground that Ganpat Singh had been adopted in another family and that according to the custom prevailing in the tribe to which the parties belonged the nephews of a deceased co-sharer were entitled to inherit his property per stirpes. A settlement was eventually arrived at, whereby a one-third share was allotted to the sons of Ganpat Singh, now represented by the plaintiffs, a one-third share to Baldeo Singh, and a one-third share to the sons of Roshan Singh. In pursuance thereof an application was filed in the mutation proceeding on the 7th of August, 1912, stating that the parties had arrived at a settlement amongst themselves, fixing the shares which each was to get in the property of the deceased, and asking that mutation of names might be effected in accordance therewith. The petition contained a detail of the landed property left by Narpat Singh, with a specification of the share which each party was to hold, Subsequently they divided the house property also and undertook to pay the debts due by Narpat Singh in the same proportion. Certain agreements were executed and registered by the parties to evidence the latter transactions.

2. The allegation of the plaintiffs, who are the descendants of Ganpat Singh, is that the consent of the sons of Ganpat Singh had been obtained at the time of the settlement by fraud, that one of the sons was a minor at the time and that the other sons were of immature understanding. They claimed that they were entitled to a half share in the property left by Narpat Singh and sued for the recovery of such portion as the defendants held in excess of their half share, with mesne profits. The trial court found against them and dismissed their claim. The lower appellate court allowed their appeal and remanded the suit to that court for a decision on

the merits.

3. The trial court found that no deception had been practiced by the defendants and that the settlement made was binding on the parties. The lower appellate court did not determine whether any fraud or deception had been practiced. It treated the petition of compromise, filed in the mutation proceeding, as inadmissible for want of registration; and from the observation made by it that the parties had apparently acquiesced in the arrangement for some years and that the representatives of each of the brothers of Narpat Singh had discharged one-third of his debts, it might be inferred that it was inclined to hold that some such arrangement had taken place, but no explicit finding was recorded by it.

4. The first question for consideration in this appeal is whether the petition of compromise filed in the mutation proceeding purported or operated to create, extinguish or declare any rights in immovable property of the value of over rupees one hundred, and required registration. The petition does not by itself purport to create or extinguish any right to or interest in immovable property. It does not even purport to declare any such interest. It begins by reciting that a mutual settlement had taken place whereby the shares of each of the contending parties had been fixed in a particular manner, and then goes on to ask that the mutation of names may be effected in accordance with the shares specified in the application. The recital in question was intended to serve merely as a prelude to the operative part of the petition and cannot independently of the operative part serve as a valid test for determining whether the petition in question required registration. As pointed out in *Sakharam Krishnaji v. Madan Krishnaji* (1881) I.L.R. 5 Bom. 232 (236), and in *Satrohan Lal v. Nageshwar Prasad* (1916) 19 Oudh Cases 75 (80), the expressions 'create' 'assign' 'limit' or 'extinguish' imply a definite change of legal relation to property by an expression of will embodied in the document referred to, and the expression 'declare' must import a similar meaning. An acknowledgment might serve as evidence of the right acknowledged, but it might not have been made with an intent to 'declare' that, right. A letter containing an admission, direct or inferential, or a recital that a partition has taken place or a settlement has been arrived at in a particular manner, does not 'declare' a right. That term implies a declaration of will made in writing to serve as evidence thereof and not a mere statement of fact. Unless such a distinction is accepted, all correspondence and petitions would have to be excluded, from which any admission or acknowledgment might be gathered of a right or interest, the instrument of which, if there was one, would need to be registered.

5. The object of filing a petition of compromise in a mutation proceeding is to intimate to the court in which that proceeding is pending that the matters in contention between the parties have been settled out of court and do not any longer require determination and that the mutation of names may be effected in accordance with that settlement. Indirectly, the petition reciting the settlement might serve in a future proceeding as evidence of the terms of the settlement, but its object is directly to obtain mutation in a particular manner and not to declare any rights.

6. The petition in the present case asked that the mutation of names should be effected in accordance with the settlement arrived at, after stating what the nature of that settlement was. It was, to use the language of their Lordships of the Privy Council in *Pranal Anni v. Lakahmi Anni* (1899) I.L.R. 23 Mad. 508 (514), a mere step of judicial procedure and did not require registration. A mutation proceeding is a proceeding in which evidence can be taken and the rights of parties determined in a summary manner unless adjusted out of court, and, as their Lordships of the Privy Council observed in *Bindesri Naik v. Ganga Saran Sahu* (1897) I.L.R. 20 All. 171 (180), the provisions of Section 17 of the Registration Act do not apply to proper judicial proceedings, whether consisting of pleadings filed by the parties or of orders made by the court. As the petition contained nothing more than a recital of the oral settlement effected out of court it should not have been excluded by the lower appellate court from consideration in determining whether such a settlement had taken place.

7. The next question is whether such a settlement could have been effected out of court, so as to affect immovable property of the value of Rs. 100 and upwards, otherwise than by a registered instrument. Section

9 of the Transfer of Property Act (IV of 1882) says that a transfer of property may be made without writing in every case in which a writing is not expressly required by law, A family settlement of 'disputed claims does not necessarily involve the transfer of a right from one person to another. In *Stapilton v. Stapilton 1 White and Tudor 8th Edn. p. 234* it was held that 'an agreement entered into upon a supposition of a right, or of a doubtful right, though it afterwards comes out that the right was on the other side, shall be binding, and the right shall not prevail against the agreement of the parties, for the right must always be on one side or the other; and, therefore, the compromise of a doubtful right would be a sufficient foundation of an agreement.'

8. Commenting on that decision the Editors of the *Leading Cases in Equity* say: 'From the case of *Stapilton v. Stapilton 1 White and Tudor 8th Edn. p. 234* the current of authorities has been uniform, and wherever doubts and disputes have arisen with regard to the rights of different members of the same family, and fair compromises have been entered into to preserve the harmony and affection or to save the honour of the family, those arrangements have been sustained by this Court, albeit, perhaps, resting upon grounds which would not have been considered satisfactory, if the transaction had occurred between mere strangers. And a family arrangement may also be implied, without any express written contract, from a long course of dealing between the parties' (*Ibid p. 254*).

9. In *Gordon v. Gordon 36 Eng. Rep. 910 (917)* Lord Eldon observed: 'Where family agreements have been fairly entered into, without concealment or imposition upon either side, with no suppression of what is true, or suggestion of what is false, then, although the parties may have greatly misunderstood their situation and mistaken their rights, a court of equity will not disturb the quiet which is the consequence of that agreement.'

10. In a settlement of a doubtful right truth may be on either side, but the essential effect of the settlement is that further trouble or investigation is put an end to and a settlement is concluded to restore harmony. Such a settlement does not necessarily imply a transfer of property or rights by one party to another. It proceeds, in the language of their Lordships of the Privy Council in *Rani Mewa Kuwar v. Rani Hulas Kuwar (1974) L.R. 1 I.A. 157 (166)*, 'on the assumption that there was an antecedent title of some kind in the parties and the agreement acknowledges and defines what that title is.' In *Khunni Lal v. Gobind Krishna Narain (1911) I.L.R. 33 All. 356 (367)*, their Lordships of the Privy Council, referring to a compromise entered into between certain members of a family, by which they had settled their disputes and divided the family property, quoted with approval certain observations in *Lalla Owdh Beharee Lull v. Ranee Mewa Koonwer N.W.P. H.C. Rep. (1868) 82 (84)*, wherein the learned Judges had said: 'The true character of the transaction appears to us to have been a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute, other than that falling to his share, and recognizing the right of the others as they had previously asserted it, to the portion allotted to them, respectively. It was in this light, rather than as conferring a new distinct title on each other, that the parties themselves seem to have regarded the arrangement, and we think that it is the duty of the courts to uphold and give full effect to such an arrangement.'

11. If a family settlement does not involve the transfer of any rights in immovable property from one party to another and merely defines or acknowledges the antecedent rights of contending members of the family, which were till then involved in doubt and uncertainty, or settles disputes relating thereto, such a settlement does not fall within the purview of any of the provisions of the Transfer of Property Act (No. IV of 1882) and need not be reduced to writing. The consideration for such a settlement) is the mutual promises made or forbearance shown by one party to the other, and it is not open to either party to such a settlement to resile from it afterwards. The position of the parties is necessarily altered by such a compromise, so that if the question is afterwards opened up they cannot always be replaced as they were before the compromise. Any one of them may be in a less favourable position for renewing his litigation; he may have to undertake an additional trouble and expense in again getting up his case, and he may no longer be able to produce the evidence which would have proved it originally. It is thus a detriment to the party consenting to a compromise, arising from a necessary alteration in his position which prevents the other party from going behind it, and no court of equity would permit a settlement into which the parties have entered with open

eyes to be re-opened with impunity, The defendant Baldeo 'Singh was denying the right of the sons of Ganpat Singh to succeed to the property of Narpat Singh, on the ground that Ganpat Singh had been adopted in another family, If his objection had been tried and found to have been valid, the plaintiffs would not have been entitled to any share. He was also setting up a custom by virtue of which, according to his contention, the nephews were entitled to inherit per stirpes. It is unnecessary to inquire whether his pleas were well founded or not. If he chose to surrender his objections and to reduce his claim from a half to one-third, in consideration of the sons of Ganpat Singh and Roshan Singh consenting to allow him that share as if the inheritance had devolved per stirpes, it would be inequitable to permit the plaintiffs or the dependants of Roshan Singh now to go behind that settlement and to re-open matters which the object of that settlement was to set at rest once and for ever.

12. The settlement here made was evidently not confined to the landed property left by Narpat Singh, for soon after the parties had succeeded in getting mutation of names effected in accordance with that settlement, they proceeded to divide the house property and to apportion the liability for the payment of the debts due by Narpat Singh in a similar proportion. They have been in possession in accordance with that settlement since and have paid the debts due by Narpat Singh as if the plaintiffs and defendant No. 1, and the other defendants had been entitled to one-third share each in the property of the deceased.

13. In *Kanhai Lal v. Brij Lal* (1918) L.R. 45 I.A. 118, where upon the death of a person governed by the Mitakshara law his nephew and some other members of the family disputed the right of his widow to succeed to his property, and a compromise was entered into by which the property was immediately divided and the right of the nephew to succeed as the adopted son of another deceased uncle was recognized, it was held by their Lordships of the Privy Council, in a suit brought after the death of the widow of the original holder by the nephew aforesaid and his brother, claiming the entire property as reversioners, that he was estopped, by reason of his having entered into the agreement of compromise and obtained benefit thereunder, from claiming as a reversioner.

14. In *Musammat Hardei v. Bhagwan Singh* (1919) 24 C.W.N. 105, where a widow had divided certain property in her life-time between her daughters and daughter's sons in absolute right, surrendering her own interest therein, and a sale was subsequently made by one of her daughters in respect of the property which had been allotted to her share, the validity of which was challenged by another daughter after the death of the widow, their Lordships similarly held that the arrangement so made was binding on the daughters after the death of the widow. They referred to the evidence showing that the said arrangement had been acted on in the life-time of the widow and observed: 'The true inference appears to their Lordships to be that, at a time when Pato (the widow) was claiming to be absolutely entitled to the property in her possession, and when her rights and those of her daughters were in doubt, the members of the family agreed and arranged among themselves that the whole property should be at once divided among the daughters and their sons then living, the mother surrendering her claims and each daughter accepting the property allotted to her in severalty in lieu of the undivided share in the whole estate which would have devolved upon her on her mother's death and abandoning her right of survivorship on the death of either of her sisters. Whether this arrangement is binding on the grandsons cannot be determined in this suit, and on that question their Lordships express no opinion. But the plaintiff at all events is bound by her own agreement; and in view of this fact, and of the favour shown by the courts to family arrangements, and the long period of time which has elapsed since the arrangement was made, she cannot now be allowed to repudiate the agreement and to impeach a sale which was made upon the faith of it.'

15. The learned Counsel for the plaintiffs respondents relies on certain decisions of this Court in *Bharosa v. Sikhdar* (1914) 12 A.L.H. 998, *Bhagwan Sahai v. Har Chain* (1911) I.L.R. 33 All. 475, and *Rustam Ali Khan v. Musammat Gaura* (1911) I.L.R. 33 All. 728. But, as pointed out by Chamier, J., in the first of the cases above referred to (at page 1000), it is unsafe to assume in the case of every compromise that a party had some antecedent title to the property allotted to him. Some compromises, as he said, certainly rest on no such assumption and it often happens that property is conveyed by one party to another in consideration of the

abandonment of a claim by the other. In the second case above referred to the petition of compromise filed in the, Revenue Court dealt with matters beyond the scope of the inquiry pending before the Revenue Court, one of which afterwards became the subject of contention in the Civil Court, and it was distinctly recognized that, though the petition of compromise which was tendered in evidence as a title deed was not admissible in evidence to prove that a transfer of ownership was effected, undoubtedly it could, along with the order passed thereon, be admitted in evidence and must be taken into account for what it might be worth in deciding the issues raised in the civil suit. In the last case mentioned above there was evidently no completed settlement of the dispute, for the petition of compromise was repudiated, after it was filed, by one of the parties thereto and mutation of names was effected in his favour regardless of its terms,

16. A reference has also been made to the decisions in *Kashi Kunbi v. Sumer Kunbi* (1910) I.L.R. 32 All. 206 and *Jagrani v. Bisheshar Dube* (1916) I.L.R. 38 All. 366. In the former case a compromise was filed in a civil suit, embodying a provision as to the right of pre-emption which was not embodied in the decree, and it was held by this Court that the petition of compromise, so far as it purported to confer a right of pre-emption outside the scope of the suit, could not affect immovable property, a right to which could be created only by a registered instrument. In the latter case, the daughter of the last male owner was induced to withdraw her claim to mutation of names in her favour, in consideration of certain bonds which the brother of the last male owner had agreed to execute in her favour, but which she never received, and the consideration of the compromise was found to be inadequate. There was no proof of any valid family arrangement independently of the petition of compromise, which, it was held, was ineffective to operate as a relinquishment by the daughter of her right to the property in question, because the compromise evidencing the relinquishment was not registered.

17. It is noticeable, however, that none of the learned Judges who decided that case was in favour of excluding the petition of compromise from evidence altogether. Richards, C.J., said that it could be admitted in evidence provided it was otherwise relevant to the case.

18. In holding that the petition required registration he was evidently influenced by the consideration that the mutation proceedings were not judicial proceedings, in which a decree could possibly be passed which would have the effect of transferring the interest of any of the contending claimants; but, as pointed out by their Lordships of the Privy Council in *Sadiq Husain Khan v. Hashim Ali Khan* (1916) 19 Oudh Cases 192 (206), even uncontested mutation proceedings are proceedings of a quasi judicial character, and contested mutation proceedings are much more so. The rights created by the orders passed in such proceedings cannot be displaced except by a civil suit or appeal. Tudball, J., said that the petition of compromise did not purport to be a deed of relinquishment and did not therefore require registration, and he added that where a family settlement bond fide and free of fraud had been made and acted upon by all the parties, even though a full and proper document was not duly executed and registered, the courts had refused to go behind it. Rafiq, J., said that if the compromise filed before a Revenue Court was merely an intimation of the fact of a compromise already made, and nothing more, then the question of the admissibility of the document was irrelevant. These cases do not, therefore, help the plaintiffs.

19. The circumstances attending the filing of the petition of compromise read with the orders passed thereon, and the subsequent conduct of the parties in dividing the house property and apportioning their liability for the payment of the debts due by Narpat Singh in the proportion in which the landed property was divided, and coupled with the subsequent enjoyment of the said properties by each of them and the payment of the debts due by Narpat Singh in accordance with that settlement, lead irresistibly to the conclusion that an oral settlement had been made at or about the time when the disputes connected with the mutation proceedings arose, and that in pursuance of that settlement a petition of compromise was filed in the mutation proceeding and the division of the house property and the apportionment of the debts were afterwards effected.

20. I may add that even if the petition of compromise required registration, it would still be admissible in

evidence as, collateral evidence of the agreement which the plaintiffs seek to impeach, though it might not operate to effectuate a valid transfer of rights; and inasmuch as it has been acted upon and the parties have enjoyed benefits thereunder irrespective of what might have been or might not have been their respective rights in the property from which they received those benefits, neither party can be allowed to resile from the arrangement then made.

21. In *Mahomed Musa v. Aghore Kumar Ganguli* (1914) I.L.R. 42 Calc. 801 their Lordships of the Privy Council pointed out that even though the compromise and the decree taken together were considered to be defective or inchoate as elements making up a final and validly concluded agreement for the execution of the equity of redemption, the acts and the conduct of the parties, founded upon the performance or part performance of such an agreement, were sufficient to cure all defects; for equity will support a transaction clothed imperfectly in those legal forms to which finality attaches, after the bargain has been acted upon.

Piggott, J.

22. I agree that in this case the order of remand cannot be supported on the grounds on which it proceeds and that the appeal ought to be further heard by the lower appellate court in order to determine the points raised in the memorandum of appeal to that court but not decided. The question of the use as documents of title of petitions presented to courts of revenue, or of the orders of the said courts on such petitions, has been felt in this Court to be a difficult one, and I am not prepared to say that all the reported decisions of learned Judges of this Court on the point are to be easily reconcilable. The present in some ways is a typical case, though it is distinguished by one or two features which make the case for the defendant appellant in this Court much stronger than it would, in my opinion, otherwise have been. When a proprietor of revenue-paying property dies, it becomes the duty of the Revenue Court to ascertain on whom that property has devolved and to cause proper entries to be made in the various records of proprietary rights maintained under the provisions of the Land Revenue Act. When there is a dispute amongst parties, claiming, one against another the right of succession to the whole or to any part of the property, the proceedings in the Revenue Court usually begin, as they did in this case, with an exact ascertainment of the nature of the dispute and the conflicting claims of the various parties to it.

23. The duty of the Revenue Court after this stage is clearly laid down in the Land Revenue Act. It must first endeavour, if possible, to ascertain which of the parties is in effective possession and, if satisfied on this point, its order will merely be that the party ascertained to be in possession be recorded as proprietor in the village papers. Such order will not serve as a document of title. It is expressly left open to any party dissatisfied with that order to assert his claim before a Civil Court of competent jurisdiction. If the Revenue Court is unable to satisfy itself as to the actual possession over the disputed property, it may enter into an inquiry on the question of title and direct entries in the village records to be made in favour of the party with whom, in the opinion of the Revenue Court, the best title *prima facie* appears to rest. An order of this kind, again, cannot serve as a document of title, for the right of the disappointed party to litigate matters in the Civil Court is expressly reserved by the Land Revenue Act itself. Now we come to the question of what is to happen if the rivals come to an agreement amongst themselves. Theoretically such an agreement might be strictly limited in its scope, that is to say, the disputants might agree to enter into possession for the present in such and such shares, expressly reserving their right to bring the matter to issue before a Civil Court. Practically, in nine cases out of ten, if the parties come to an agreement, they mean it to be a final settlement and do not contemplate further litigation in any court. Even then, if the parties were always advised by a competent lawyer, the regular course for them to follow would be to present a petition before the Revenue Court simply stating that having come to an agreement amongst themselves, they have taken effective possession of the disputed property in such and such shares, and praying that the fact of their possession may be recognized by appropriate entries in the village papers.

24. Such a petition would be open to no objection whatever on the score of want of registration, but neither could it be set up in any possible eventuality as a document of title. The trouble is that the parties generally

prefer to approach the Revenue Court with a petition which, at the time, they hope, will serve as a document of title, that is to say, as an authoritative admission by each party, as against the other, of the title of the other party, to whatever share has been agreed upon amongst them, In my opinion any petition so drafted as to satisfy these conditions becomes a document purporting to declare the rights of the parties concerned in immovable property, and if that property is worth more than Rs. 100, it requires registration. In the absence of registration it is not admissible in evidence and is of no effect as a document of title.

25. I fully recognize the fact that reported judicial decisions are not unanimous on this point and that, in laying down this proposition, I am to a certain extent differing from the judgment which has been delivered by my learned brother, but I have stated the law as I understand it to be and I think I can found myself with confidence on the latest Full Bench decision of this Court on the subject, *Jagrani v. Bisheshar Dube* (1916) I.L.R. 38 All. 366. There are cases, however, and in my opinion this is one of them, which are not concluded by the above considerations. The actual agreement come to by the parties is a matter of oral arrangement amongst themselves antecedent to, and sometimes quite independent of, the drafting of the petition presented to the Court of Revenue. In the present case, for instance, the property left by the deceased comprised house property as well as revenue-paying property, and there were debts which would have to be paid by the heirs and successors of the deceased in proportion to whatever share they took in the inheritance, I think it is clear that in the present case the parties entered into an agreement which completely covered the entire question of the disputed inheritance. They executed a properly registered deed defining their respective rights in the house property, and that deed is beyond question a valid document of title and binding on the parties. They also proceeded to pay off the debts in the proportion in which they took the inheritance. This point was established by evidence which was not questioned in the lower appellate court. The only difficulty in the way of the defendant appellant in resisting this suit is that he holds no dear document of title in respect of the revenue-paying property. Now, the agreement come to by the parties in this case was undoubtedly of the nature of a family settlement of doubtful claims. At least we are bound to treat it as such, unless and until the finding of the court of first instance that there was no fraud or undue Influence employed By the defendant appellant in bringing about the agreement is reversed on appeal. When such an agreement decides a bona fide disputed claim to immovable property, particularly when the dispute is between members of the same family, I do not think that it is correct to treat the transaction as if there had been a conveyance of immovable property by any one party to any other. No doubt, theoretically, on the law and the facts of each particular case, the title was with one of the parties to the dispute and not with the other, and some learned Judges have consequently treated all cases of this sort of the assumption that the question of title can be fought out in a subsequent litigation, and that, once it has been ascertained, all the transactions connected with the agreement come to between the parties must be treated as a conveyance of immovable property by the party in whom it has been ascertained that the title really vested, in favour of the opposite party.' I am not sure that one case, at least, of my own could not be quoted against me, which seems to some extent to rest upon this view, although I think the facts of that case were clearly distinguishable from those now before us. At any rate I take this opportunity of recording my opinion, arrived at after further consideration, that it is not correct to deal with the matter on the basis above suggested.

26. The whole question in issue in a case like the present is whether the plaintiff is to be permitted to prove his title, as he claims that it existed independently of, and antecedently to, the family arrangement. The question is whether the arrangement itself does not bind the parties to it. In this view of the matter there does not seem to be room for the contention that the arrangement arrived at on the family compromise amounted to a conveyance by one party to the other. Over and above this, even if it were correct to hold that from a certain point of view a conveyance of some sort may be said to have taken place, I still think that the transaction would be wholly unaffected by those provisions of the Transfer of Property Act (No. IV of 1882) which require an instrument in writing, registered, for the purpose of effecting certain kinds of conveyance. I quite fail to see how a distribution of property amongst the parties like that which I am considering could be called either a sale, or an exchange, or a gift. If so, it follows that the parties to such an arrangement are not bound to execute an instrument in writing at all. The only difficulty will be that, if any one of the parties

subsequently elects to resile from the arrangement and to set up the title he had originally claimed for himself, the opposite party may find it difficult to prove what the arrangement was. Of course, if the entire settlement is reduced to writing, the provisions of the Registration Act and possibly also those of Section 91 of the Indian Evidence Act will come into force; and some of the reported decisions, more particularly those of Mr. Justice Chamier, to which reference was made in course of argument, really proceed upon this view of the matter. The present case in my opinion falls outside the scope of these considerations. The settlement arrived at between the parties was not reduced to writing at all in its entirety. Nowhere did the parties reduce to writing the agreement they had come to about the settlement of the debts due from the deceased proprietor. They merely gave practical effect to the arrangement they had arrived at. The question of the house property they settled by executing a valid registered instrument. The petition which they addressed to the Revenue Court, although I am disposed to agree with the learned District Judge that on its terms it did amount to an instrument declaring the rights of the parties in the property to which it referred, and was therefore subject to the registration law, nevertheless cannot be treated as an instrument in writing recording the terms of the arrangement, arrived at between the parties. The difficulty about proving what the arrangement in respect of the revenue-paying property was, is completely obviated because there is abundant evidence as to the nature of the arrangement, and the order passed by the Revenue Court in mutation proves that it was part of the arrangement between the parties that they should take possession of the revenue-paying property in certain specified shares. For these reasons I am of opinion that the defendant was entitled to set up this family arrangement as a complete answer to the plaintiffs' claim, subject only to a finding in his favour of the pleas taken in the 4th and 5th paragraphs of the memorandum of appeal to the court below. I therefore concur in the order proposed by my learned brother.

27. The appeal is allowed and the case sent back to the lower appellate court with direction to reinstate the appeal under its original number and to dispose of it after the determination of the other points involved in the appeal, in the manner required by law. The costs here and hitherto will abide the result.

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